

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

BRENDA H. SOLIZ, Individually and as §  
Representative of the Estate of TOMAS §  
FLORES SOLIZ, JR. §  
§  
Plaintiff, §  
§ CIVIL ACTION No. SA-16-CV-00370-RCL  
v. §  
§  
UNITED STATES OF AMERICA, §  
§  
Defendant. §

**REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR LEAVE TO AMEND  
DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As a general matter, courts grant leave to amend pleadings “freely . . . when justice so requires.” Fed. R. Civ. P. 15(a). The Fifth Circuit has recognized that “leave to amend is to be granted liberally unless the movant has acted in bad faith or with a dilatory motive, granting the motion would cause prejudice, or amendment would be futile.” *Jebaco Inc. v. Harrah’s Operating Co. Inc.*, 587 F.3d 314, 322 (5th Cir. 2009). The United States’ motion for leave was not filed in bad faith or with a dilatory motive, and granting the motion would not cause Plaintiff any unfair prejudice. Rather, the United States seeks leave of Court to file its Amended Proposed Findings of Fact and Conclusions of Law because the Proposed Findings of Fact and Conclusions of Law filed by the parties pre-trial do not adequately reflect the evidence that was actually submitted at trial. The motion for leave was filed promptly after the United States received trial transcripts so that justice may be done based on a complete review of the evidence presented at trial.

Contrary to the assertions made in Plaintiff’s response (without citation), each of the record citations included in the Amended Findings of Fact and Conclusions of Law references evidence and testimony admitted at trial. This is not a motion to reopen evidence or otherwise submit

evidence not already before the Court. Amending the Proposed Findings of Fact and Conclusions of Law would therefore assist the Court in reaching its decision in this case.<sup>1</sup>

The trial evidence establishes that Dr. Darrington and Dr. Nichols acted reasonably, within the standard of care, and as a majority of emergency room physicians would act under the circumstances when they treated a clean CT-scan in the first 6 hours as a rule-out test for a subarachnoid hemorrhage, as this test is approximately 99.9% accurate for positively and negatively identifying this condition. *See* ECF 63-2, United States' Am. Prop. Finding Fact & Concl. Law. Plaintiff's experts argued that this treatment was insufficient, although their testimony showed they were not up-to-date on the medical literature in this area and they could not establish the relative accuracy of their preferred tests. *Id.* The fact that Plaintiff believes she will be prejudiced by the Court's review of this evidence as it was actually presented at trial is telling, but it does not satisfy Plaintiff's burden of establishing dilatory motive, bad faith, or unfair prejudice. *See Prudential Mortg. Capital Co., LLC v. Faidi*, 444 F. App'x 732, 735 (5th Cir. 2011) (affirming district court's grant of leave to amend where opponent failed to establish dilatory motive, bad faith, or unfair prejudice). Accordingly, the United States asks that the Court grant its Motion for Leave to File Amended Proposed Findings of Fact and Conclusions of Law.

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<sup>1</sup> There is no Federal Rule of Civil Procedure specifically governing the submission of amended proposed findings of fact and conclusions of law; in fact, pursuant to Local Rule CV-7(d)(2)(e), motions for leave to amend pleadings do not require legal citations. Rather, the submission of findings of fact and conclusions of law was governed by the Court's pre-trial order contained in ECF No. 33. Notably, even after the Court has issued a final decision in this matter, the Federal Rules allow the parties to file a motion to amend the Court's findings of fact and conclusions of law. *See* Fed. R. Civ. P. 52.

Respectfully Submitted,

**JOHN F. BASH  
UNITED STATES ATTORNEY**

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**ATTORNEYS FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of April 2019, I electronically filed the foregoing with the Clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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